

¹ 5 U.S.C. § 8101 *et seq.*

left than the right, due to factors of his federal employment including exposure to high volume noise and use of an earpiece for radio communication. He noted that he first became aware of his condition and realized its relation to factors of his federal employment on March 16, 2020. Appellant explained that he had been exposed to these employment factors over his 24 years of federal service. He did not stop work.

In a development letter dated May 14, 2020, OWCP informed appellant that additional medical and factual evidence was necessary to establish his claim. It informed him regarding the evidence necessary and provided a factual questionnaire for his completion. Appellant was afforded 30 days to submit the requested evidence.

On July 11, 2020 OWCP received a summary of appellant's employment history, which noted his alleged exposure to loud noise.

On July 17, 2020 OWCP referred appellant, along with a statement of accepted facts (SOAF) and the medical record to Dr. Paul W. Loeffler, a Board-certified otolaryngologist serving as second opinion physician, regarding the nature, extent, and causal relationship of his hearing loss.

In a July 27, 2020 report, Dr. Loeffler reviewed the SOAF, history of injury, and medical evidence of record. Audiometric testing obtained on August 7, 2020 at the frequencies of 500, 1,000, 2,000, and 3,000 Hertz (Hz) revealed losses at 15, 15, 15, and 20 decibels (dBs) for the right ear, respectively; and 20, 15, 15, and 30 dBs for the left ear, respectively. Dr. Loeffler diagnosed tinnitus and left-sided sensorineural hearing loss, opining that appellant's sensorineural hearing loss and tinnitus were due to noise exposure encountered in appellant's federal employment.

OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus by decision dated October 26, 2020.

On November 25, 2020 OWCP referred the medical record and SOAF to Dr. Jeffrey Israel, an OWCP district medical adviser (DMA) and Board-certified otolaryngologist, to determine the extent of appellant's hearing loss and permanent impairment due to appellant's employment-related noise exposure. On December 1, 2020 Dr. Israel reviewed Dr. Loeffler's report and applied the audiometric data to OWCP's standard for evaluating hearing loss under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,² (A.M.A., *Guides*) and determined that appellant sustained a right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of zero percent. He noted that a tinnitus award of five percent could not be given as there was no binaural hearing loss. Dr. Israel averaged appellant's right ear hearing levels of 15, 15, 15, and 20 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those 4 levels then dividing the sum by 4, which equaled 16.25. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 to calculate 0 percent right ear monaural hearing loss. Dr. Israel then averaged appellant's left ear hearing levels of 20, 15, 15, and 30 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those four levels then dividing the sum by four, which equaled 20. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 to calculate 0 percent

² A.M.A., *Guides* (6th ed. 2009).

left ear monaural hearing loss. Dr. Israel then calculated zero percent binaural hearing loss by multiplying the right ear loss of zero percent by five, adding the zero percent left ear loss, and dividing this sum by six. He recommended yearly audiograms, use of noise protection, and authorization for hearing aids for both ears for tinnitus masking and, for the left ear, for hearing loss. Dr. Israel determined that appellant had reached maximum medical improvement (MMI) on August 7, 2020 the date of audiometric examination with Dr. Loeffler.

By decision dated December 29, 2020, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish that his accepted hearing loss condition was severe enough to be considered ratable. It noted that he was, however, entitled to medical benefits, including hearing aids, if recommended by his physician.

In a memorandum dated March 11, 2021, Dr. Israel notified OWCP that he had provided a DMA report dated December 1, 2020 relative to appellant's schedule award request for hearing loss. He stated that, at that time, a zero percent binaural hearing impairment score was calculated and a four percent tinnitus award was disallowed due to the zero percent binaural hearing impairment. Dr. Israel noted that he had received a request from OWCP identical to the one he received in December 2020 and that it was unclear why OWCP wanted the report completed again, as no data had changed according to the case record. He resubmitted his December 1, 2020 DMA report to OWCP.

By decision dated April 19, 2021, OWCP denied appellant's schedule award claim, finding that the evidence of record was insufficient to establish that his accepted hearing loss condition was severe enough to be considered ratable.

LEGAL PRECEDENT

The schedule award provisions of FECA³ and its implementing regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. FECA however does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The sixth edition of the A.M.A., *Guides*⁵ has been adopted by OWCP for evaluating schedule losses and the Board has concurred in such adoption.⁶

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*. Using the frequencies of 500, 1,000, 2,000, and 3,000 Hz, the losses at each

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

⁵ *Supra* note 2.

⁶ *H.M.*, Docket No. 21-0378 (issued August 23, 2021); *V.M.*, Docket No. 18-1800 (issued April 23, 2019); *J.W.*, Docket No. 17-1339 (issued August 21, 2018).

frequency are averaged.⁷ Then, the fence of 25 dBs is deducted because, as the A.M.A., *Guides* points out, losses below 25 dBs result in no impairment in the ability to hear everyday speech under everyday conditions.⁸ The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.⁹ The binaural loss of hearing is determined by calculating the loss in each ear using the formula for monaural loss, the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.¹⁰ The Board has concurred in OWCP's adoption of this standard for evaluating hearing loss.¹¹

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss for schedule award purposes.

OWCP properly referred appellant to Dr. Loeffler for a second opinion examination to evaluate appellant's hearing loss. In his July 28, 2020 report, Dr. Loeffler reviewed audiometric testing at the frequencies of 500, 1,000, 2,000, and 3,000 Hz, revealing losses at 15, 15, 15, and 20 dBs for the right ear, respectively; and 20, 15, 15, and 30 dBs for the left ear, respectively. He diagnosed tinnitus and left-sided sensorineural hearing loss, opining that appellant's sensorineural hearing loss and tinnitus were due to noise exposure encountered in his federal employment. By decision dated October 26, 2020, OWCP accepted appellant's claim for bilateral sensorineural hearing loss and bilateral tinnitus and forwarded appellant's case to a DMA to assess his percentage of permanent employment-related hearing loss.

On December 1, 2020 Dr. Israel reviewed Dr. Loeffler's examination report and determined that appellant sustained a right monaural loss of zero percent, a left monaural loss of zero percent, and a binaural hearing loss of zero percent. He noted that a tinnitus award of five percent could not be given as there was no binaural hearing impairment loss. Dr. Israel averaged appellant's right ear hearing levels of 15, 15, 15, and 20 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those 4 levels then dividing the sum by 4, which equaled 16.25. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 to calculate zero percent right ear monaural hearing loss. Dr. Israel then averaged appellant's left ear hearing levels of 20, 15, 15, and 30 dBs at 500, 1,000, 2,000, and 3,000 Hz, respectively, by adding the hearing loss at those four levels then dividing the sum by four, which equaled 20. After subtracting the 25 dB fence, he multiplied the remaining 0 balance by 1.5 to calculate 0 percent left ear monaural hearing loss. Dr. Israel then calculated zero percent binaural hearing loss by multiplying

⁷ A.M.A., *Guides* 250.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *V.M.*, *supra* note 6.

the right ear loss of zero percent by five, adding the zero percent left ear loss, and dividing this sum by six.

The Board finds that the DMA properly concluded that appellant did not have ratable permanent impairment of his hearing warranting a schedule award. Although appellant has accepted employment-related hearing loss, it is insufficiently severe to be ratable for schedule award purposes.¹²

The Board has held that, in the absence of ratable hearing loss, a schedule award for tinnitus is not allowable pursuant to the A.M.A., *Guides*.¹³ Accordingly, as appellant does not have ratable hearing loss, the Board finds that he is not entitled to a schedule award for tinnitus.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish ratable hearing loss, for schedule award purposes.

ORDER

IT IS HEREBY ORDERED THAT the April 19, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 14, 2022
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹² See *W.T.*, Docket No. 17-1723 (issued March 20, 2018); *E.D.*, Docket No. 11-0174 (issued July 26, 2011).

¹³ *Id.*